

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

	X
BMW OF NORTH AMERICA LLC et al.,	:
Plaintiffs,	:
-v-	:
M/V COURAGE et al.,	:
Defendants.	:
	X
HDI GLOBAL SE,	:
Plaintiff,	:
-v-	:
M/V COURAGE et al.,	:
Defendants.	:
	X
INTERNATIONAL AUTO LOGISTICS, INC.	:
Plaintiff,	:
-v-	:
FIDELIO LIMITED PARTNERSHIP, INC et al.,	:
Defendants.	:
	X

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DATE FILED: <u>09/05/2018</u>

16-CV-4063 (JMF)

16-CV-4125 (JMF)

ORDER

JESSE M. FURMAN, United States District Judge:

Upon review of the parties' letters and the cases cited therein (16-CV-4063, Docket Nos. 185, 190, 192), the Court agrees with Ford Motor Company ("Ford") and the Vessel Interests that there is no legal basis for GovLog NV ("GovLog") to maintain its cross-claims for

contribution and/or indemnity against Ford. As GovLog concedes (*see* 16-CV-4063, Docket No. 190, at 1), if GovLog and Ford are joint tortfeasors, *McDermott, Inc. v. AmClyde*, 511 U.S. 202 (1994), would dictate that GovLog is liable only in proportion to its share of the fault and that claims against the settling defendants, including Ford, are not “permitted,” or even “necessary.” *Id.* at 209. The cases cited by GovLog — *Chisholm v. UHP Projects, Inc.*, 205 F.3d 731, 734-37 (4th Cir. 2000), and *Becker v. Poling Transp. Corp.*, 2002 U.S. Dist. LEXIS 27619, at *12-13 (E.D.N.Y. May 23, 2002) *aff’d*, 356 F.3d 381 (2d. Cir. 2004) — do suggest that *McDermott’s* proportionate share approach may not apply in the event GovLog and Ford are determined not to be joint tortfeasors. But at most, those cases would support a conclusion that a non-settling defendant (here, GovLog) is entitled to a set-off in the amount of any settlement by another defendant (here, Ford). *See Chisholm*, 205 F.3d at 737-39; *Becker*, 2002 U.S. Dist. LEXIS 27619, at *22. In other words, whether GovLog and Ford are determined to be joint tortfeasors or not, GovLog’s cross-claims against Ford fail as a matter of law.

In light of the foregoing, as well as Vessel Interests’ representation on the record at yesterday’s conference that GovLog could not be held liable for more than its proportionate share of the fault, GovLog’s and Ford’s cross-claims against each other must be and are dismissed with prejudice. In light of that, all parties agree that the motions to strike Ford’s jury demands are moot. Thus, any open motions to strike are denied. The Clerk of Court is directed to docket this Order in 16-CV-4063, 16-CV-4125, and 16-CV-4149, and to terminate the following docket entries: (1) 16-CV-4063, Docket Nos. 165 and 167; 16-CV-4125, Docket Nos. 124 and 126; and 16-CV-4149, Docket Nos. 123 and 127.

SO ORDERED.

Dated: September 5, 2018
New York, New York


JESSE M. FURMAN
United States District Judge